The City Council met in a Special Meeting on Tuesday, May 24, 1983 at 12:00 noon in the Council Chamber, Room 315 of the Municipal Building with the following present:

Mayor York, Presiding
Ms. Babb
Reverend Calloway
Mr. Edwards
Mr. Jordan
Mr. Keller
Mr. Upchurch
Mr. Walters

Mayor York called the meeting to order and presented Council members with budget review schedules.

Mayor York indicated the purpose of the meeting was to discuss Cablevision, noting the Council received an analysis and an evaluation of proposals last Tuesday. In regard to the schedule, he noted on June 7 and 21 the Council is scheduled to vote on the ordinances if the Council moves ahead and instructs the attorney to draft these documents.

City Attorney McCormick indicated at the May 17 meeting, he had just received the report and since then he has reviewed the report and commended the consultant, noting the report is thorough. He indicated he agreed with the report and pointed out that FutureCom made very good proposals especially in the areas of programming, ancillary services, etc., but pointed out there are deficiencies in other areas. He agreed with the report which indicated the application of Cablevision of Raleigh would rate higher in key areas of finance, management, system design and reality of statistical data, noting if you can't do these things well the rest of the items could not be done well.

Mayor York indicated there are a few areas requiring clarification on the ATC proposal such as clarifications of stand-by power facilities and the use of the word "would" versus the word "will." He indicated he had come up with 9 or 10 areas of clarification that he would review later in the meeting. Mrs. Babb indicated it would be helpful in terms of setting the framework for discussion today if the consultant would give a brief overview, hitting the main point including the strength and weaknesses and giving attention to areas that needs to be clarified before the franchise is awarded. Mr. Walters indicated this is a complicated detailed report and he had trouble following it.

Gordon Fuqua indicated in reviewing these proposals, they segmatized the proposal and studied them on this basis. He indicated to look at an application like these is like building an automobile, noting you have a pretty interior, the greatest sun-visors, the greatest seats and doors which all warrants attention of the people looking at them but indicated the key element was did the car have a steering wheel and engine that would take the car to the point that you wanted it to go. He indicated the report was broken down into areas and then tied together. He noted the steering wheel is considered to be the management and the engine is the technical qualifications and financial ability to put a package together. He indicated the evaluation was not done on a point percentage basis, noting an application from a cable company is as much marketing and sales tools as the contractor. Mr. Fuqua indicated it would be the responsible of the City Attorney to be sure all the basic requirements are in the ordinance and the franchise agreement so the company knows what they have to conform to.

Joe Martin indicated at the end of each section of the analysis, there is a summary and conclusion section. He noted each section does not have equal weight and noted the evaluation was done in this manner as this is the way the RFP was structured. At this point he reviewed the rate section and explained the summary and conclusion found on page F-38. He noted FutureCom received the nod in the rate section, noting that is not to say ATC rates are inferior, it is just that FutureCom was less expensive. Mr. Martin then explained the summary and conclusion for the access and local origination section found on Page E-12 of the report. He noted both applicants seem to have met the City's RFP requirements for access, however in certain cases, FutureCom exceeded those requirements. He noted with certain clarifications, both applicants could provide a community programming medium that has not been available previously in Raleigh. Mr. Walters indicated there are so many aspects to each one and questioned how can a consultant say one is better than the other. Mr. Martin indicated professionals could differ in their opinion and indicated they are open to any question, noting this is their opinion.

Alan Julich reviewed the institutional network and services and referred to the summary and conclusions found on Page D-13 of the report. Mr. Julich indicated both companies met the RFP requirement and indicated they sighted a few areas where there was uncertainty about ATC's commitment to certain requirements. He noted they felt overall that FutureCom would get slight preference, noting their commitments to home security would come on line sooner. He stated there are other areas of supporting development, where FutureCom goes beyond ATC's commitment and therefore they gave the slight edge in this section to FutureCom. He noted the RFP was specific and both met provisions in all requirements. In response to questioning from Mr. Jordan, Mr. Julich indicated they did pay close attention to wording from each company. He indicated overall FutureCom was much more specific in using the word "will" and ATC used the word "would." He indicated it needs to be in the franchise agreement a

specific commitment by the operator to agree and carry out the requirements in each area. He indicated as the ATC proposal is written, there are a couple of questions regarding this type of wording which could be taken care of in the ordinance.

Mayor York indicated he listed a few of those that he felt should be clarified. He referred to Page D-6, noting this involves the word "would" versus "will".

Mr. Julich then reviewed the signals and services section and referred to the summary and conclusions found on Page C-19. He indicated in this section they gave the overall preference to FutureCom. He noted in areas of residential service, both are offering most of the CATV services that are available to anyone in the country and either would be able to provide excellent service in this area. He indicated in a few areas such as FM service and area TV stations, they gave a slight preference to FutureCom. He referred to Ancillary Services noting the nod was given to FutureCom, as they are much more specific in the services they say they will provide; however their timetable is a little long on this. He noted slight preference was given to FutureCom, however both could offer excellent service.

James Reave reviewed the technical analysis section and reviewed the summary and conclusions found on Page B-23 and Page B-24. He indicated ATC was ahead of FutureCom in these areas and rated ATC ahead of FutureCom in expanded capacity areas. He indicated the primary reason is that both have expansion capability, but ATC had a bond behind it and did not lock itself into technology. He indicated ATC gives itself flexibility to put in something other than coxial cable, noting fiber optics is coming down the line now. He indicated in regard to site selection, that ATC has a slight edge. He indicated ATC's plan has two remote tower sites which gives them additional flexibility for future service. He noted ATC's preference was given on schedule, noting FutureCom indicated a schedule up to 30 months and ATC proposed 27 months.

Mr. Fuqua reviewed the ownership and financial analysis section and referred to the summary and conclusions found on Page A-25. He indicated they believe in local ownership and from that standpoint, FutureCom has local people who had a great reason to be involved, but they could find no financial stability to show that money was available or could be available that they would be able to pay for all of the services that had been described. He indicated if a company does not have the wherewithal to do these items, it is of no value to the citizens. He indicated as far as financial ability, ATC was significantly ahead in that area. In regard to management, he noted they could find nothing to base this opinion on. He stated as far as FutureCom is concerned, it offers wise and successful businessmen but the ability to maintain and operate this system was not available as they could find no cable management expertise. He indicated ATC is the first or second largest company in this business and it is a very efficiently operated management company and they ranked ahead in this section. In regard to Council expenditures, he indicated both companies provided enough funds to construct the system that the RFP requested and found little difference in this section. He indicated when you look at financial capability, there are always overages and the company has to have the finances available to take care of this. He indicated it came down to a decision in that section of who could build the system properly designed and who could operate it best, and in this section, they gave the nod to ATC.

Mayor York indicated the goal he has had is to be as fair as possible and to have a process that was fair to anyone wanting to compete in that process and give the Council time to review this on a step-by-step basis after it is analyzed. He indicated he had received a letter today with additional information from FutureCom which is difficult, he felt, to consider at this time. Mr. Edwards questioned why additional information is needed now, as the cutoff time was some time back. Mayor York indicated it is difficult to consider additional information at this time, however if there was no objections, he would accept a brief statement from one person from each of the two companies. He noted they have now had an opportunity to read the consultant's analysis. Mr. Upchurch urged that the time given to each speaker be limited.

Fred Fletcher, representing FutureCom, referred to the letter submitted to Council members this morning. At this point he read the letter noting it is obvious where the consultants favor is. He indicated what they have actually proposed is clearly preferred over the competition in the very areas where cable companies compete. He indicated they may have erred in one small portion by not clearly articulating the management talent they have on board in their stockholders. He indicated the terms local ownership is just that - local ownership. He indicated within their group they have Leo Hoarty and Swapan K. Bose. He referred to the analysis which indicated "it is surprising that FutureCom did not place Mr. Swapan K. Bose, their engineering consultant, in a technical management position that would enhance their technical background -- likewise for Mr. Leo Hoarty, a respected name in the Cable television field whose hands-on operating experience coupled with his marketing and association work possibly matches or exceeds even the experience of the President of ATC." Mr. Fletcher emphasized that Mr. Hoarty is a resident of Raleigh and he will be the manager of the system and the chief engineer would be Mr. Bose, and if that is not enough, they would hire the very best available. He indicated the partners have extensive background from other businesses and there has to be some transfer ability of that management resource they have among their group. He indicated the intention is for them to take a hands-on role with management. He indicated the Council's previous position on multi-franchise has made it impossible for them to get to the table a letter of commitment on financing. He indicated under normal circumstances

if there were exclusive franchises, this would be available. He indicated since this was discussed the Council has been kind enough to respond to their questions regarding multi-franchises and the Council has made statements and they have had discussions with the City Attorney on his answers and they are satisfied and the lenders and investors are satisfied with the market conditions in Raleigh. He indicated they have had two weeks to pursue their lending commitments with this new information in mind. He noted they are in serious negotiations at this very minute with a North Carolina party who could guarantee complete and timely equity and debt financing. He noted these negotiations would be concluded by the Council's June 7th meeting. He indicated it appears that there is an opportunity in FutureCom's proposal and felt the consultants would agree to that also. He asked the Council to not give special preference, but weigh this new information very seriously and not make a clear decision today. He indicated under procedures outlined, the Council could agree to award the franchise to FutureCom and if they cannot arrange finances, they would have to forfeit their bond and the City would not lose any time. He indicated a second option would be to give FutureCom preliminary award subject to them providing requirements by June 21 which is the final date of the adoption schedule and at that time if requirements are not met, ATC could be awarded the franchise. He indicated an additional option would involve the Council not voting to award any franchises today and defer selection until the June 7th meeting and continue to study the proposals and new information and evaluation and have the City Attorney continue and proceed with drafting of a minimum standards ordinance. He requested the Council's consideration of any one of his three options.

Wade Hargrove was present representing ATC. He indicated we all new when discussions began of refranchising that this would not be an easy item. He indicated he felt people are ready for a decision and the message that everyone has heard is the citizens want a new modern cable system and they want it now. He felt we are at the point that it is time to make that decision. He indicated much has been said about Futurecom's local ownership and noted he did not want to get into a confrontation about the merits of their proposal. He noted it is not a proposal, but it is a mere shell of a proposal and it continues to be. He indicated, in regard to comments made by Mr. Fletcher that FutureCom is having serious negotiations at this time with a North Carolina Company that he felt this means they still are trying to put their act together. He noted FutureCom has had months to do that and they haven't done it and they are asking the Council to delay this item again. He indicated FutureCom, in their proposal, indicated they would issue additional stock and they have 22 local people but there is no evidence in the proposal that these people will wind up owning 99 percent and felt the local ownership would be diluted if they get the kind of financing that would be required to operate and construct this system. He indicated ATC has been in this community for a long time and questioned how long does someone have to be here before they are considered local. He noted ATC employs 50 people in this community. He noted the Council is already two weeks behind their original schedule. In regard to exclusive franchising, he indicated everyone who is knowledgeable about this knows that FutureCom could not get the kind of management because it is the perception that ATC has an extremely competitive proposal. He indicated that is why there is not a great deal of interest coming in and there is not a lot of people interested in taking on a company with experience and expertise ATC has in this community. He indicated their advantage is because they had been in this community and had been doing business here. He noted FutureCom has told the Council if it doesn't give them a monopoly they will not construct and operate their system. He indicated ATC has never said that and they want this to be a very competitive business. He indicated all ATC has asked for is the right to compete in the marketplace. He indicated the marketplace makes decisions about the need for more than one company, noting this is a free enterprise system. He indicated he felt it is amusing that FutureCom has tried over and over and over to say that a single non-exclusive franchise is different than a monopoly. In regard to wording of ATC's proposal, he noted there was no intention by anyone to make any distinction between the words "would" and "will."

Mr. Upchurch made the following statement:

> "Our consultants have reviewed the ATC proposals. All of us have reviewed the two proposals we received and we have studied this issue for a long time. I believe all of us agree with our consultants that the ATC proposal is by far superior. ATC has the financial backing, know how and experience in the cable business to provide what they have promised to provide. ATC is a leader in the cable industry and they have offered the people of Raleigh a cable TV system that will be second to none. It is a State of the art system and we are fortunate to be getting it in these uncertain times. It will be a cable system all of us can be proud of. Last week we instructed our attorney to draft a general cable ordinance and a specific franchise ordinance for our review by May 31, 1983 and for action on June 7. We need today to tell him what we want to see in that draft. I think we should let him know that the ATC proposal should serve as the basis for the ordinances.
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> Therefore, I make the following motion:
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> 1. The City Council finds that ATC's proposal complies with the City's cable television RFP and ATC is qualified to build and operate a cable system in Raleigh as it has proposed.

2. The City Attorney is instructed to incorporate the ATC proposal in the City's general cable television ordinance which will include the rates, program services, construction schedule, institutional network, technical standards, studio, access facilities, funding and all other provisions included in ATC's proposal.

3. The City Attorney is instructed to prepare a cable TV franchise ordinance granting a non-exclusive cable TV franchise to ATC and this franchise shall conform to the general cable ordinance and, in addition, include a provision requiring an interim 21 channel upgrade as ATC has proposed."

Mr. Keller seconded the motion made by Mr. Upchurch. Mayor York indicated he had mentioned items that need to be clarified and they could be handled subsequent to this motion if this motion is adopted.

Ms. Babb indicated she cannot support this motion for a number of reasons. She stated she has disagreed with the process throughout and is concerned that the Council has taken a lot of time on this issue but it has not received the careful dissection and study it needed. She indicated the Council never addressed the question of how a cable franchise is to be treated and felt it has much in common with a public utility. She indicated we have had a classic case of certain individuals and companies stating certain assumptions until people are convinced these are a reality. She indicated this is a technique that is effective, but is not a technique to serve the best interest of the people. Ms. Babb indicated the Council talks about what is heard from people in the community and stated it is a fact that the people in Raleigh are not happy with the service they have had from ATC. She reiterated that is a fact and maybe it will be better in the coming years but she did not feel that has been addressed. In regard to the motion that has been made, she suspected that a majority of this Council will continue its course in such a way that the majority feels they prefer and the franchise would go to Cablevision of Raleigh and the majority rules. She indicated even if we are moving towards that conclusion, it is still not too late to inject that there be some guarantee that if the City contracts with the same company that we at least get the best we can for the citizens. Ms. Babb indicated if it is the will of the majority that we move ahead, the attorney should be directed to talk with the consultant and begin more conversations with ATC and develop a draft for minimum standards ordinance that would incorporate the strengths of both proposals. She indicated based on the history this city has had with Cablevision, she felt we should carefully tie it down and get an absolute guarantee so everyone knows what will be expected. Ms. Babb made a substitute motion that the City Attorney be directed to work with the consultant and begin more conversation with ATC to develop a draft for a minimum standards ordinance that will incorporate the strengths of both proposals. Her motion died for the lack of a second.

Reverend Calloway indicated the Council has agonized and worked on this and felt the Council pursued it with complete honesty and integrity and kept in mind what it wanted to do for the citizen. He felt the consultants served the City well and did a good job of advising and steering the Council in the direction the Council would have to follow. He felt we had good support from the City Attorney and felt the Council has essentially run out of string on arriving at a decision. He felt the Council has been fair, the Council has advertised and people have come before the Council to discuss this on several occasions. He indicated the Council members have tried to keep up with the reading and had consultants to help with technicalities and felt the procedure was above board and fair. He indicated he was satisfied with what has taken place so far and could support Mr. Upchurch's motion. He felt there are some things that the Council could look at in terms of particulars.

Mayor York questioned if the motion was in accordance with what needs to be done and if the second section of the motion would give room for clarification and points the consultants have raised. Mr. McCormick, in responding to the second part of Mayor York's question, indicated this would give room for clarifications in the points that have been raised. He indicated at the last meeting Ms. Babb asked the same question about the ordinance and he assured her that he is writing this ordinance to make an interpretation the way we want them to read. He indicated the ordinance and franchise will be written so it favors the City if there are ambiguous items. He explained he had worked up already, a substantial portion of the minimum standards ordinance and included that in the RFP. He indicated they could not go further until the proposal is selected and they are very much towards finishing the minimum standards ordinance. He indicated he could see nothing wrong with the motion on the process and timetable.

Ms. Babb questioned the attorney as to whether there would be further discussion with ATC. The City Attorney indicated his recommendation would be that there be as little discussion as possible. He indicated he has an idea of what the Council wants and what their proposal is interpreted to include and once ATC is presented with this ordinance, they may refuse it. Mr. Edwards concurred with the City Attorney and felt that there should be no further negotiations and as little conversation as possible.

Ms. Babb indicated she had stated consistently that she has never at any time indicated the Council members had not acted with integrity and good intentions. She indicated every Council member has done that and everyone did the best that they could according to their particular values, goals and ideas. She felt all Council people had tried to do their best on this item.

Mr. McCormick indicated he is to have these documents to the Council by May 31 so the Council will have a full week to review them before a vote is taken on June 7.

A vote on the motion made by Mr. Upchurch was taken and passed with members voting as follows: ayes - Reverend Calloway, Mr. Edwards, Mr. Jordan, Mr. Keller, Mr. Upchurch, Mr. Walters and Mayor York; noes - Ms. Babb. THE MAYOR RULED THE MOTION ADOPTED.

Mayor York then reviewed the list he had compiled of clarification that should be included in the documents prepared by the Attorney as follows:

1. Page B-5 - clarification of stand-by power facility
2. Page B-13 - commitment by ATC to install interactive terminals
3. Page B-15 - operation service within a reasonable time
4. Page B-18 - timing of interim upgrade
5. Page C-8 - automated channels - no firm commitment
6. Page C-15 - timing for Teletext services
7. Page D-6 - Institutional Network and Services - use of the word "would," versus "will".
8. Page F-24 - remote control
9. Page F-33 - charge for second set.

Ms. Babb urged that there be careful consideration given to the charge for a second set question as this would involve many households.

Reverend Calloway referred to Page A-24 relating to the affirmative action component and urge that the attorney look at this closely.

Adjournment

There being no further business, the meeting adjourned at 1:15 p.m.

Brenda Anderson
Deputy City Clerk

jt/SP2/1